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PATENT APPLICATION

ATTORNEY DOCKET NO. 200308253-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Stephen Carney

Confirmation No.: 8794

Application No.: 09/712,101

Examiner: Quang N. Nguyen

Filing Date: November 14, 2000

Group Art Unit: 2141

Title: Dynamic Load Balancing of Video Requests

Mail Stop Appeal Brief - Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEF

Transmitted herewith is the Reply Brief with respect to the Examiner's Answer mailed on February 8, 2007.

This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new ground rejection.)

No fee is required for filing of this Reply Brief.

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Date of facsimile: April 5, 2007

Typed Name: Ginger Yount

Signature: 

Respectfully submitted,

Stephen Carney

By 

Dan C. Hu

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Date : April 5, 2007

Telephone : (713) 468-8880, ext. 304

Rev 10/05a (ReplyBri)

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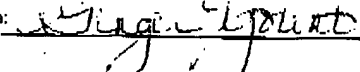
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Applicant:	Stephen Carney	§	Group Art Unit:	2141
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For:	Dynamic Load Balancing of Video Requests	§	Atty. Dkt. No.:	200308253-1 (HPC.0052US)

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REPLY BRIEF PURSUANT TO 37 C.F.R § 41.41

Sir:

This is a Reply Brief responsive to the Examiner's Answer dated February 8, 2007.

I. REPLY TO EXAMINER'S RESPONSE TO APPELLANT'S ARGUMENTS**1. Rejection of Claims 2, 4-7, and 9-12 Under 35 U.S.C. § 103 Over Chen In View of Guenther.**

In response to Appellant's arguments that a *prima facie* case of obviousness has not been established with respect to independent claim 4 over Chen and Guenther, the Examiner substantially repeated assertions made in the final rejection. Specifically, the Examiner stated that the motivation for combining Chen and Guenther is "to allow the system to select the 'best provider' (i.e., *the most appropriate server*) and redirect/forward the client request to the selected server as operating in 'handoff' mode, based on the object of the request, to provide enhanced availability, responsiveness and load-balancing for client requests to object access across

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multiple servers (Guenthner, col. 4, lines 5-10 and col. 8, lines 20-25)." 2/8/2007 Examiner's Answer at 11 (emphasis in original).

The quoted rationale provided by the Examiner does *not* provide the suggestion or motivation to modify Chen based on the teachings of Guenthner. As discussed in the Appeal Brief, Chen describes a system in which a client selects a media server from a list provided by a metaserver (*not* a media server) to the client. Thus, Chen already provides a mechanism to "eliminate the bottleneck problem associated with the limited speed of a single multimedia server, reduce the network congestion and increase the fault tolerance of the whole system." Chen, Abstract. There was clearly no need to modify Chen to incorporate Guenthner's Fig. 4B mechanism, because to do so would have changed the principle of operation of the Chen system and would have also rendered the Chen system unsatisfactory for its intended purpose of enabling the client to select a multimedia server from a list of multimedia servers provided by a metaserver. Modifying the Chen system with the Guenthner Figure 4B arrangement would cause the metaserver of Chen to send the list of multimedia servers to one of the multimedia servers instead of the client, which would effectively *prevent* the client of Chen from selecting a multimedia server from the list. The proposed modification of Chen based on the teachings of Guenthner, as proposed by the Examiner, would change the operation such that instead of sending the list from the metaserver to the client, the list would be sent by the metaserver to the multimedia server of Chen. There is absolutely no reason for the metaserver to send its list of potential multimedia servers to any one of the multimedia servers, as such a list would be completely useless to any multimedia server. The operation of Chen depends on the fact that this list of potential multimedia servers is communicated to a client to allow the client to make the selection.

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In other words, according to Chen, there simply is no reason to involve a multimedia server in the selection of a multimedia server. A person of ordinary skill in the art looking to the teachings of Chen and Guenther would not have been motivated to change the operation of Chen to incorporate un-related teachings of Guenther. In fact, modifying the technique employed in Chen to cause a listing of multimedia servers to be sent to any of the multimedia servers would make the multimedia server selection process more inefficient. *See In re Fine*, 837 F.2d 1071, 1074-75, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988) (reversing an obviousness rejection because the teachings of one of the references was inconsistent with the claimed invention); *In Re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125 (Fed. Cir. 1984) (reversing an obviousness rejection where the modification of a prior art reference proposed by the Examiner would render the prior art apparatus inoperable for its intended purpose).

The Examiner also noted that Chen and Guenther are "considered analogous based on their related fields of endeavor." 2/8/2007 Examiner's Answer at 11. However, just because Chen and Guenther are "analogous" does not change the fact that the objective evidence establishes that no motivation or suggestion existed to combine the reference teachings, as discussed above.

In view of the foregoing reasons as well as reasons provided in the Appeal Brief, Appellant respectfully requests the reversal of the final rejection of the above claims.

2. Rejection of Claims 21-33 Under 35 U.S.C. § 103 Over Chen In View of Guenther.

With respect to independent claims 21 and 28, the Examiner responded to Appellant's arguments by referring to the Examiner's comments regarding claim 4. Appellant respectfully

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submits that a *prima facie* case of obviousness has not been established with respect to claims 21 and 28 (and their dependent claims) for the reasons set forth above and in the Appeal Brief.

Therefore, it is respectfully requested that the final rejection of the above claims be reversed.

3. Rejection of Claim 8 Under 35 U.S.C. § 103 Over Chen In View of Guenther.

With respect to dependent claim 8, Appellant noted that Chen and Guenther do not teach a master streaming media server that includes a load poll thread, a load average queue, and load average threads to determine the load balancing among the plurality of streaming media servers.

The Examiner cited Chen, column 7, lines 1-38, as teaching this feature of claim 8. Specifically, the Examiner referred to tasks performed by a metasever, including balancing load across available multimedia servers by determining if multimedia servers are busy and how close a multimedia server is to a client. 2/8/2007 Examiner's Answer at 12. The Examiner also noted the teaching in Chen that the metasever periodically communicates with each multimedia server to receive status information such as number of current connections and multimedia content. *Id.* From this, the Examiner derived that Chen must teach the elements of claim 8.

This assertion is clearly incorrect. It is unclear how "select[ing] the proper algorithm to balance the load by measuring how busy each multimedia server is" and "periodically communicating with each multimedia server to receive its status information such as number of current connections" leads to the conclusion that a load poll thread, a load average queue, and load average threads are taught or suggested. The Examiner made a conclusory statement that the features of the claim "could be" derived—however, this type of obviousness analysis is

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legally incorrect. It is well established that "[t]he mere fact that the prior art *may be* modified in the manner proposed by the Examiner does not make the modification obvious unless the prior art suggested the *desirability* of the modification." *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992) (emphasis added).

This is an additional reason that a *prima facie* case of obviousness has not been established with respect to claim 8. Reversal of the final rejection of claim 8 is respectfully requested.

II. CONCLUSION

In view of the foregoing and arguments provided in the Appeal Brief, reversal of all final rejections and allowance of all pending claims is respectfully requested.

Respectfully submitted,

Date: Apr 5, 2007

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